IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 35207 of 2007(N)

PETITIONER:

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1. V.M.VENUGOPAL, S/O. MADHAVAN,
   VELLOORTHODU VEEDU, MANKURISSI, MANKARA,
   PALAKKAD DISTRICT.

2. M.C.KUSALAN, S/O. CHAMI,
   MANKOTTUKALAM VEEDU, THENKURUSSI P.O.,
   ALATHUR, PALAKKAD DISTRICT.

3. K.S.AMALENDU, S/O. SUBASH,
   KOLLARA VEEDU, EDATHURUTHI P.O., KODUNGALLUR,
   THRISSUR DISTRICT.

4. V.DEVADASAN, S/O. VELAYUDHAN,
   PARUTHIKKADU VEEDU, KUNNISSERY, ALATHUR,
   PALAKKAD DISTRICT.

5. A.RAJESH, S/O. APPU CHENAPPAN,
   THOTTAMKKALAM, NANDANKIZHAYIL, CHITTUR,
   PALAKKAD DISTRICT.

BY ADV. SRI.M.G.KARTHIKEYAN
SRI.NIREESH MATHEW
SRI.C.C.THOMAS (SR.)

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
   SECRETARY, TAXES (A) DEPARTMENT, GOVT.SECRETARIAT,
   THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF EXCISE,
   EXCISE COMMISSIONERATE, PUBLIC OFFICE BUILDING,
   THIRUVANANTHAPURAM.

3. THE ASST. EXCISE COMMISSIONER,
   PALAKKAD.

4. THE EXCISE INSPECTOR,
   KUZHALMANNAM EXCISE RANGE, PALAKKAD DISTRICT.

BY GOVERNMENT PLEADER, SMT.M.K.PUSHPALATHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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W.P.(C) No. 35207 of 2007-N

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Dated this the 7th day of December, 2007

J U D G M E N T

The petitioners were licensees of toddy shops in Group-V of Kuzhalmannam Excise Range in Palakkad District. By Ext.P4 judgment, it was noticed by this Court that the case of the petitioners was that no offence was detected though samples were taken from some of the shops. The petitioners were, therefore, relegated for consideration of their objections, including on the question whether the suspension of licence should continue. Thereafter, Ext.P5 was issued directing that suspension will continue until a final decision is taken on the question of cancellation. After issuing that order on 07/11/2007, Ext.P6 order is issued on 13/11/2007 cancelling the licence.

2. The petitioners have a case that Ext.P1 Chemical Analysis Report is insufficient, even to proceed against them, in view of the decision of this Court in **Asokan v. State of Kerala [1998 (1) KLT 265].** The binding nature of that judgment may be an issue, but

still, the Excise Commissioner, in considering the objection of the petitioners, was duty bound to state the reasons which led to the conclusion that the licences are to be cancelled. This is just not there in the impugned Ext.P6.

Hence, the impugned Ext.P6 is quashed sustaining Ext.P5 for the time being and directing that the petitioners, either by themselves or through counsel, would be heard by the Excise Commissioner on 12/12/2007 and final decision shall be taken, at any rate, within a period of three working days thereafter. The writ petition is allowed to the aforesaid extent. There shall be no resale of the shops until the aforesaid decision is taken.

THOTTATHIL B. RADHAKRISHNAN,
Judge

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